

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAKOB UNTERFORSTHUBER and JOHANN MITTERER

Appeal No. 2000-0201
Application No. 08/691,330

HEARD: APRIL 11, 2001

Before McCANDLISH, Senior Administrative Patent Judge, and
COHEN, and McQUADE, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 7, all of the claims in the application.

Appellants' invention relates to a device for displaying an active state of a braking system in a motor vehicle to a driver of the motor vehicle. A basic understanding of the invention can

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be derived from a reading of exemplary claims 1, 3, and 4, respective copies of which appear in "APPENDIX A" of the main brief (Paper No. 20).

As evidence of obviousness, the examiner has applied the documents listed below:

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| Okubo | 5,369,585 | Nov. 29, 1994 |
| Yoshino | 5,378,052 | Jan. 03, 1995 |

The following rejection is before us for review.

Claims 1 through 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Yoshino in view of Okubo.

The full text of the examiner's rejection and response to the argument presented by appellants appears in the final rejection and the answer (Paper Nos. 15 and 21), while the complete statement of appellants' argument can be found in the main and reply briefs (Paper Nos. 20 and 22).

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OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered appellants' specification and claims, the applied teachings,¹ and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determination which follows.

We do not sustain the rejection of appellants' claims under 35 U.S.C. § 103(a).

Independent claim 1 is drawn to a device that requires, inter alia, a display that compares a value (F_{possible}) indicating a maximum possible braking force with a value (F_{actual}) indicating an actual braking force. Independent claim 3 specifies, inter alia, a display which indicates to a driver

¹ In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

a comparison of a value (F_{possible}) indicating a maximum possible braking force with a value

(F_{actual}) indicating an actual braking force. Independent claim 4 recites, inter alia, a comparative display providing an indication to a driver of the actual braking force and the (maximum) possible ² braking force.

It is quite apparent to us that both the examiner and appellants appreciate the recitation of a maximum possible braking force, as disclosed and claimed, to denote a variable force in the active state of a braking system.

With this in mind, we recognize, as did apparently both the examiner and appellant, that the patent to Yoshino is directed to an electronic brake pedal adjustment apparatus wherein a display 4 (Fig. 2) portrays an actual brake fluid

² Claim 4, lines 4, 5 expressly specify a maximum possible braking force, while line 8 sets forth the possible braking force. Since the latter phrase recites the possible braking force, it is clear that the antecedent basis for this recitation is the earlier recitation of a maximum possible braking force. During any further prosecution before the examiner, it would appear to be appropriate that line 8 be amended so that the recitation therein is consistent with its antecedent basis.

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pressure point along with a "previously fixed" normal maximum braking point G (column 6, lines 40 through 44).

In concluding that the claimed invention would have been obvious, the examiner relies upon the combined teachings of the Yoshino and Okubo references, with the Okubo document being relied upon as suggesting what is perceived to be lacking in the Yoshino patent, i.e., a maximum possible braking force, as now claimed.

Like appellants, we have difficulty with the examiner's rejection. Whereas Yoshino allows a driver to choose and previously fix a normal maximum braking point, the anti-lock control system of Okubo, contrary to the Yoshino teaching, establishes a varying maximum vehicle body deceleration predicated upon road conditions. It follows that, as articulated by appellants (reply brief, page 2), the proposed modification would not be sought by one skilled in the art since it clearly would "destroy the purpose and function" of the Yoshino teaching, i.e., first and second set braking

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characteristics lines, with a previously fixed normal maximum
braking point. Accordingly, the rejection is not sound.

In summary, this panel of the board has reversed the
rejection of appellants' claims 1 through 7 under 35 U.S.C.
§ 103(a).

REVERSED

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| HARRISION E. McCANDLISH |) | |
| Senior Administrative Patent Judge |) | |
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| |) | BOARD OF PATENT |
| IRWIN CHARLES COHEN |) | APPEALS |
| Administrative Patent Judge |) | AND |
| |) | INTERFERENCES |
| |) | |
| |) | |
| |) | |
| JOHN P. McQUADE |) | |
| Administrative Patent Judge |) | |

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